REMARKS/ARGUMENTS

The Office Action mailed April 5, 2004 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Claim Status and Amendment to the Claims

Claims 1-4, 9-24, 26, 30-32, 52, and 63-85, 87-91 are now pending. No claims stand allowed.

Claim 86 has been canceled by this amendment, without prejudice.

The 35 U.S.C. §103 Rejection

Claims 1-4, 9-23, 26, 30-31, 52 and 63-91 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Abramson et al. (U.S. Pat. No. 6,539,494) in view of Lamaruqe et al. (U.S. Pat. No. 6,690,651), among which claims 1, 9, 13, 17, 20, 30, 63, 66, 68-69, 71, 74, 76, 78, 81 and 83 are independent claims.

This rejection is respectfully traversed.

According to M.P.E.P. §2143,

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure.

Furthermore, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Claim 1 defines a backup server for enabling a data communications network to recover from a local server failure, the data communications network including a network access server (NAS) for coupling a call placed from a call-in user to the data communications network, the NAS having a memory associated therewith. The claimed backup server comprises (a) an information packet receiver responsive to the local server failure, the information packet receiver receiving from the memory associated with the NAS an information packet associated with an ongoing call placed by the call-in user via the NAS, the information packet containing call information of the ongoing call for maintaining connection of the ongoing call if the local server fails, and (b) a parser for reconstructing the call information from the information packet such that the backup server maintains the ongoing call to the data communications network, as recited in claim 1.

In the Office Action, the Examiner contends that the elements of the presently claimed invention are disclosed in Abramson except that Abramson does not teach a user's placing a request by calling in. The Examiner specifically equates Abramson's backup server **26a** (FIG. 1 thereof) with the claimed backup server, Abramson's application server **24a** (FIG. 1 thereof) with the claimed local server, and Abramson's HTTP server **22a** (FIG. 1 thereof) with the claimed NAS. The Examiner also alleges that

Abramson's session ID teaches the claimed call information or context data. The Office Action further contends that Lamarque teaches the missing feature and that it would be obvious to one having ordinary skill in the art at the time of the invention to incorporate Lamarque into Abramson in order to obtain the claimed invention. The Applicants respectfully disagree for the reasons set forth below.

In Abramson, each application server **24** is assigned to a single backup server **26** (column 4, lines 5-6 thereof). During a session, the application server **24** maintains session data elements, and as session data is modified, the session data is backed up to the assigned backup server **26** (column 4, lines 8-16 of Abramson). The HTTP server **22** (the alleged NAS) services a request and determines an assigned application server **24a** using a session ID (alleged call information) (column 4, lines 17-23 of Abramson). When an attempted communication to the assigned application sever **24a** fails or otherwise the application server **24a** is not available (a failed session), the request is forwarded to a new application server **24b** using the original session ID (column 4, lines 25-39 and 56 of Abramson). The new application server **24b** which receives the forwarded request and session ID then connects to the backup server **26a** for the originally assigned application server **24a** and recovers the user's session data (column 4, lines 53-61 of Abramson). Then, that session data is reconstituted into a newly created session with a new session ID, and once the new session has been created, the application server **24b** can process the request in the same manner as the request if the backup server **26a** had not been used (column 4, lines 61-67 of Abramson).

Accordingly, in Abramson, the backup server **26a** merely maintains the user session data for the application server **24a**. The session data is received from the application server **24a** (the alleged local server), not from the HTTP server **22** (the alleged NAS) as recited in claim 1. It should be noted that the session ID (the alleged call information is sent from the HTTP server **22** (connection module **30**) to the new application server **24b** when the original application **24a** is not available, although the session ID may be originally assigned by the application server/module **24** (column 3, lines 45-46 of Abramson). Thus, the backup server **26a** of Abramson never receives the session ID from the HTTP server **22**. In addition, the backup server **26a** is merely used as a *data* backup, and does not back up the operation or processing function of the application server **24a**, or *reconstruct* the call information to maintain the session. In Abramson, it is the new application server **26b** that reconstruct the user session data from the backup server **26a**. Furthermore, contrary to the Examiner's allegation, the session ID merely *identifies* a specific session and does not contain information necessary to reconstruct or maintain the session. That is why the new application server **24b** has to connect to the backup server **26a** and further obtain the user session data from the backup server **24b** in Abramson. The session ID forwarded from the HTTP server **22** is used to identify and connect to the corresponding backup server **26a**.

Accordingly, Abramson, whether considered alone or combined with or modified by Lamarque, does not teach or suggest the claimed backup server comprising (a) an information packet receiver responsive to the local server failure, the information packet receiver receiving from the memory associated with the NAS an information packet

associated with an ongoing call placed by the call-in user via the NAS, the information packet containing call information of the ongoing call for maintaining connection of the ongoing call if the local server fails, and (b) a parser for reconstructing the call information from the information packet such that the backup server maintains the ongoing call to the data communications network, as recited in claim 1.

Claim 9 defines a local server for enabling a data communications network to recover from a failure of said local sever, the data communications network including a backup server and a network access server (NAS), the NAS coupling a call placed from a call-in user to the data communications network, the NAS having a memory associated therewith. The claimed local server comprises (a) an encoder for generating an information packet associated with an ongoing call placed by the call-in user via the NAS, the information packet containing call information for maintaining connection of the ongoing call if the local server fails, and (b) a sender for transmitting the information packet from the encoder to the memory associated with the NAS, the information packet being stored in the memory to be available to the backup server if the local server fails, as recited in claim 9.

In Abramson, the application server **24a** (the alleged local server) may assign a session ID which the HTTP server **22** (the alleged NAS) may use, but the session ID is not the claimed call information maintaining connection of the ongoing call, as discussed above. In addition, the application server **24a** sends the session data elements (arguably call information) to the backup server **26a** (alleged backup server, but actually a mere data-backup), not to the HTTP server **22** (the alleged NAS). Accordingly, Abramson,

whether considered alone or combined with or modified by Lamarque, does not teach or suggest the claimed local server as recited in claim 9.

Claim 17 defines a network access server (NAS) for maintaining a call placed from a call-in user to a data communications network, the data communications network including a local server for servicing the call, and a backup server capable of servicing the call. The claimed NAS comprises (a) a receiver for receiving an information packet from the local server, the information packet associated with an ongoing call placed to the NAS by the call-in user, the information packet containing context data of the ongoing call for maintaining connection of the ongoing call, (b) an associated memory for storing the information packet, (c) a failure detector for determining if a failure of the local server has occurred, and (d) a sender for transmitting the information packet from the associated memory to the backup server if the local server failure has occurred.

As described above, in Abramson, if the original application server **24a** is not available, the session ID is sent from the HTTP server **22** (the alleged NAS) to the new application server **24b**, but not to the backup server **26a**, as discussed above. In addition, even if the new application server **24a** might arguably correspond to the claimed backup server instead, the session ID is not the claimed call information or context data maintaining connection of the ongoing call, as discussed above. Furthermore the session data elements are maintained in the data backup server **26a**, not in the HTTP server **22**, as discussed above. Accordingly, Abramson, whether considered alone or combined with or modified by Lamarque, does not teach or suggest the claimed NAS as recited in claim 17.

Other independent claims 13, 20, 30, 63, 66, 68-69, 71, 74, 76, 78, 81 and 83 includes, among others, substantially the same distinctive features as discussed above. Accordingly, it is respectfully requested that the rejection of claims based on Abramson and Lamarque be withdrawn.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Dependent Claims

Claims 2-4 and 85 depend from claim 1, claims 10-12 and 87 depend from claim 9, claims 14-16 and 88 depend from claim 13, claims 18-19, 52 and 89 depend from claim 17, claims 21-24, 26 and 90 depend from claim 20, claims 31-32 and 91 depend from claim 30, claims 64-65 depend from claim 63, claim 67 depends from claim 66, claim 70 depends from claim 69, claims 72-73 depend from claim 71, claim 75 depends from claim 74, claim 77 depends from claim 76, claims 79-80 depend from claim 78, claim 82 depends from claim 81, and claim 84 depends from claim 84, and thus include the limitations of respective independent claims. The argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable at least for the same reasons.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Conclusion

It is believed that this Response places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-1698.

Respectfully submitted,
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Limited Recognition under 37 CFR §10.9(b)

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